



November 19, 2014

John C. McMillan
Deputy Division Chief
Office Engineer
Division of Engineering Services

07-2W5404
07-Ker-5725
B.O. 10/15/14

Dear Mr. McMillan:

By this letter GEMS Environmental Management Services, Inc. (GEMS) is protesting the Department of Transportation's (Caltrans) decision that GEMS' bid was non-responsive as it failed to "...Meet the goal shown on the Notice to Bidders" as stated in your letter dated November 19, 2014.

In our October 10, 2014, bid, GEMS complied with all the CALTRAN's specifications within the limitations of the Electronic Bidding platform, and was the low and responsible bidder. GEMS' fully met the 3% Disability Veteran Business Enterprises (DVBE) goal for the contract as is evidenced by its bid and the quote of Anchor Supply Inc. which GEMS provided on November 3, 2014, per your request.

In your letter of November 17, 2014, you state that GEMS failed to describe the "item to be performed or supplied by DVBE." This assertion is incorrect. Bid Item Number 5 is described as "building work." GEMS listing Anchor Supply, Inc. (Anchor) complied with the 3% percent requirement of the DVBE. Under the Electronic Bidding platform, GEMS was limited to 80 characters to provide a description of Anchor's work, and appropriately provided that Anchor was to be a "material supplier." Given the restriction of Caltrans' own Electronic Bidding platform, specifically listing every piece of material Anchor was to supply was simply impossible within the 80 characters allowed. Additionally, the Electronic Bidding platform did not allow for attachments or additional space and therefore precluded GEMS from attaching Anchor's quote to its bid.

MPG Construction's Bid Protest

The allegations attacking the bid of GEMS on minor irregularities are frivolous and without merit. Therefore, we encourage the Department to award Contract 07-2W5404 to GEMS as the low and responsible bidder who has provided the best value to the State.

"It certainly would amount to a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, and cancel the low bid on minor technicalities, with the hope of securing

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acceptance of his, a higher bid. Such construction would be adverse to the best interest of the public and contrary to public policy." *MCM Construction, Inc. v. City and County of San Francisco* (1998) 66 Cal.App.4th 359, 370. It is "well established that a bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid, or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential. *Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 904. "The purpose of requiring governmental entities to open the contracts process to public bidding is to eliminate favoritism, fraud, and corruption; avoid misuse of public funds; and stimulate advantageous market place competition. *Id.* at 907.

Here, GEMS' is the low and responsible bidder and MPG's allegation that GEMS was required to list in the DVBE form, every piece of material to be provided by Anchor is without merit, and as set forth more thoroughly above, impossible under the limitations of the Electronic Bidding platform. Moreover, MPG's allegation that Anchor does not meet the requirements of the DVBE is baseless and should be disregarded.

GEMS listed Anchor as its material supplier for Bid Item Number 5. GEMS' description of Anchor was limited by Caltran's own Electronic Bidding platform which made it impossible to call out the specific materials Anchor was going to supply. Caltran's own Electronic Bidding platform did not allow additional space for description or for GEMS to attach any documents including Anchor's quote. When asked, GEMS provided Anchor's quote on November 3, 2014. It simply does not benefit the State to allow MPG as a higher bidder to attempt to manufacture a technicality, compliance of which would be impossible, to obstruct the fair bidding process.

Therefore, the Department must award Contract No. 07-2W5404 to GEMS Environmental Services, Inc. as the low and responsible bidder.

Regards,



Richard Camacho
President

Cc:	Tim Bullivant	DOT	facsimile	916-227-6282
	Molly Yumikura	DOT	facsimile	916-227-6282

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Environmental Management Services, Inc.

FAXED
11/19/2014

FAX

To: John C. McMillan, Deputy Division Chief **From:** Richard Camacho

Fax: 916-227-6282 **Date:** November 19, 2014

Phone: **Pages:** 3 (including cover)

Re: Contract No. 072W5404 Letter of Protest **CC:** Tim Bullivant, Branch Chief
Molly Yumikura, Contract Award Analyst
GEMS File

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